(32)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI D.R. DESHMUKH, J.

Misc. Appeal No. 918 of 2006.

APPELLANT

NON-APPLICANT NO.1

United India Insurance Company Limited, Through Branch Manager, U.I.I.Co. Ltd., Near Ram Mandir, Ambikapur, District Sarguja (Chhattisgarh)

Vs.

RESPONDENTS

1. Mst. Rambai, widow of Late Narayan Ram Rajwade, Occupation House wife, Aged about 35 years,
2. Gitesh Rajwade, son of Late Narayan Ram Rajwade, Occupation Student, Aged about 13 years,
3. Pankaj Rajwade, son of Late Narayan Ram Rajwade, Occupation Student, Aged about 11 years,
4. Devendra Rajwade, son of Late Narayan Ram Rajwade, Occupation Student, Aged about 9 years,

Respondents no.2,3,4 minor through natural Guardian Mother Rambai (respondent No.1),
All resident of Village, Police Station and Post Bishrampur, Tahsil Surajpur, District Sarguja (Chhattisgarh)

CLAIMANTS

5. Khajan Singh, Occupation Vehicle Owner, Through Baba Mastnath Transport Pvt. Ltd., Bishrampur, Colliery, Distt. Sarguja (Chhattisgarh),
6. Jhunulal, son of Milan Ram, permanent resident of Village Andhla, Post Lakhanpur, District Sarguja (C.G.) and present resident of Baba Mastnath Transport Co. Limited, Bishrampur, District Sarguja (Chhattisgarh).

NON-APPLICANT NO.2 AND 3.

33

Present : Shri H.B. Agrawal, learned Sr. Advocate with Ms. Sangeeta Mishra, learned counsel for the appellant.

ORAL ORDER
(Passed on 30th August, 2006)

The following order of the Court was passed by **D.R. Deshmukh,J.**

In this appeal the only point urged by the learned counsel for the Insurance Company is that the learned MACT erred in negating the plea raised by the Insurance company that the accidental death of Narayan Ram Rajwade was due to contributory negligence on the part of the deceased. However, a perusal of para 3 of the award clearly shows that the claimants had clearly pleaded that the driver of the truck No C.G 06 A 2483 drove the said vehicle in a rash and negligent manner and suddenly applied breaks without giving any parking light which resulted in accidental death of the deceased. From the perusal of the award, it also appears that the Insurance company led no evidence to substantiate the plea of contributory negligence. In that view of the matter, the learned MACT was wholly justified in negating the plea raised by the insurance company relating to contributory negligence. No other point is urged in this appeal. In addition, jurisdictional police having investigated into the accident, filed charge sheet against the driver of the motor vehicle insured by the appellant insurance company. There is no iota of evidence to substantiate the plea taken by the insurance company. Appeal is devoid of merit and it is accordingly dismissed.

As per Hon'ble Court Order passed in M.C.C. 92 of 2007 on 10.4.2007. Vehicle number is Corrected.

Sd/-
R. (Judicial)

P.B 24/10/07

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

bini